

APPROVED MINUTES

TOWN OF KITTERY BOARD OF APPEALS

November 28, 2006

Council Chamber

CALL TO ORDER:

Chairman LaMarca called the meeting to order at 7:00 p.m.

BOARD MEMBERS PRESENT:

Brett Costa, Vern Gardner, Herb Kingsbury, Craig Wilson, Sarah Brown, Secretary, and Michael LaMarca, Chairman

ALSO PRESENT:

CEO Heather Ross, Recorder Chris Kudym, William D. Howells, Jeffrey Kilty, Ken Lamont, William Mow, Howard Patten, Tom Harmon, Tom McCue

Chairman LaMarca introduced the members of the Board, outlined the hearing procedure and led those present in the Pledge of Allegiance. The Chair then read the Notice of Hearings.

PUBLIC HEARINGS:

1. **Continuance:** W. D. Howells requesting a Special Exception to the terms of Title 16, Section 12, Subsection 050.C (Page 254) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct an intra-family dwelling by adding an apartment, including a galley kitchen, to Residence #11 for his disabled son at property located at 11 Lawrence Lane, Map 18, Lot 32, Kittery Point, zoned Suburban Residential.
2. Jeffrey Kilty requesting an Administrative Appeal of a Notice of Violation to the terms of Title 16, Section 12, Subsection 060 (Page 256), Title 16, Section 28, Subsection 130.A (Page 340), and Title 16, Section 32, Subsection 490 N.2.a (Page 388) of the Kittery Land Use and Development Code Zoning Ordinance in order to receive a Building Permit to construct a new right side and back (waterside) wall on exact footprint of old walls at property located at 150 Whipple Road, Map 10, Lot 1, Kittery, zoned Urban Residential.
3. Howard Patten, representing H&M Realty, LLC, requesting a Special Exception to the terms of Title 16, Section 12, Subsection 100.C (Page 263) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove existing commercial building and construct a mixed-use commercial/residential building at property located at Bridge Street, Map 3, Lot 69, Kittery, zoned LB.
4. Chris Eckel requesting an Administrative Appeal of a Notice of Violation to the terms of Title 16, Section 28, Subsection 130 (Page 340), Title 16, Section 32, Subsection 490.K.2 (Page 380), and Title 16, Section 32, Subsection 490.N.2.a (Page 388) of the Kittery Land Use and Development Code Zoning Ordinance in order to maintain and finish current construction plan on property located at 3 Knight Avenue, Map 4, Lot 70, Kittery, zoned Kittery Foreside.

Chairman LaMarca invited Mr. Howells to come to the podium

- 1 **Continuance:** W. D. Howells requesting a Special Exception to the terms of Title 16, Section 12, Subsection 050 C (Page 254) of the Kittery Land Use and Development Code Zoning Ordinance in order to construct an intra-family dwelling by adding an apartment, including a galley kitchen, to Residence #11 for his disabled son at property located at 11 Lawrence Lane, Map 18, Lot 32, Kittery Point, zoned Suburban Residential.

Mr. Howells explained to the Board that they wanted to put an apartment in their house for their son who had MS. Their intent was to install a very simple galley type kitchen with a two-burner stove, a small refrigerator, sink and microwave.

Chairman LaMarca asked if there was anyone present who would like to speak in favor of, opposed to, or about the application in any way. Hearing no response, the Chair requested the CEO's report.

CEO Ross reported that this was a conforming lot with nonconforming and conforming structures located within the Suburban Residential and Shoreland Zones. Mr. Howells was proposing an intra-family dwelling unit in order to help care for his son. He currently had an intra-family dwelling unit at 3 Lawrence Lane for his son and was aware he needed to dismantle that intra-family dwelling unit before a new intra-family dwelling unit for 11 Lawrence Lane could be approved. The CEO said she had copies of the original approval for 3 Lawrence Lane and, at that time in January 1988, the Board felt the application fell within requirements of a temporary intra-family dwelling unit but with the condition that when it no longer existed, that the stove and gas line to the stove be removed.

Ms. Brown wanted to confirm with the applicant his understanding about the need to dismantle it so the unit could not be rented out. Mr. Howells understood that but was not sure what "dismantled" meant. CEO Ross stated she usually required taking out the appliances and disconnecting the kitchen sink.

Mr. Costa wondered if there was a way to approve this without doing it as a Special Exception since they were dealing with a handicapped situation.

Mr. Wilson stated he knew they had to vote on each criteria of the Special Exception but asked if it was necessary to reach each one and the CEO suggested they might want to do the Special Exception just for the intra-family dwelling.

Chairman LaMarca noted they did need to go over each one but did not have to read them word for word; they would simply reference each line starting on Page 333 and if any member of the Board took issue with any item, they could speak up.

The Board had no objections to 16.24.060.A.1 through 4. The Board had no objections to 16.24.060B.1 through 16. Chairman LaMarca said he would like to add that upon the issuance of an Occupancy Permit for the new dwelling unit, the old Permit would be revoked and the stove and the

gas line, etc would have to be removed and the CEO said that would happen within the same time period. After suggestions from Mr. Wilson and Mr. Costa, the Chair indicated they would stipulate 30 days leeway time between the issuance of the new Permit and the dismantling of the old stove and connector lines.

Ms. Brown, as secretary, read the motion as follows: Move the application of W. D. Howells requesting a Special Exception to the terms of Title 16, Section 12, Subsection 050.C of the Kittery Land Use and Development Code Zoning Ordinance be approved in order to construct an intra-family dwelling by adding an apartment, including a galley kitchen, to Residence #11 for his disabled son at property located at 11 Lawrence Lane, Map 18, Lot 32, Kittery Point, zoned Suburban Residential, with the stipulation that within 30 days of issuance of the Occupancy Permit for 11 Lawrence Lane, the stove and electrical line at 3 Lawrence Lane needed to be dismantled. Construction shall be in accordance with a sketch submitted, dated and signed by W. D. Howells and Michael LaMarca, Chairman. A motion to approve was made by Mr. Kingsbury, seconded by Mr. Wilson.

A SHOW OF HANDS RESULTED IN A UNANIMOUS VOTE IN FAVOR. MOTION PASSES 6/0. APPLICATION APPROVED.

Chairman LaMarca informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and that they would try to get Findings of Fact out within seven days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for such Permit, it merely granted the CEO authority to issue the same.

FINDINGS OF FACT
Application #1 – W. D. Howells

1. *This application involved a conforming lot with conforming and nonconforming structures.*
2. *The applicant was looking to install an intra-family dwelling into his home for his disabled son.*
3. *The applicant already had an Intra-Family Permit, which had been issued for 3 Lawrence Lane. They were renovating and moving to 11 Lawrence Lane and were looking to do the same thing at that address.*

CONCLUSIONS

1. *Based on 16.24.060.A and B, the Board found this application met the standards for an Intra-Family Dwelling and approved it 6/0, with the stipulation that within 30 days of issuance of the Occupancy Permit, the stove and electrical line at No. 3 would be dismantled.*

A motion to accept the Findings of Fact, as written, was made by Mr. Costa, seconded by Mr. Kingsbury, with all in favor

2. Jeffrey Kilty requesting an Administrative Appeal of a Notice of Violation to the terms of Title 16, Section 12, Subsection 060 (Page 256), Title 16, Section 28, Subsection 130.A (Page 340), and Title 16, Section 32, Subsection 490 N 2.a (Page 388) of the Kittery Land Use and Development Code Zoning Ordinance in order to receive a Building Permit to construct a new right side and back (waterside) wall on exact footprint of old walls at property located at 150 Whipple Road, Map 10, Lot 1, Kittery, zoned Urban Residential.

Mr. Kilty came to the podium and gave the Board an update on his project and explained that he rebuilt the left and back walls without a Permit, not realizing he needed one. Mr. Kilty told the Board that in July he received a Building Permit to take an existing two-family structure and change it to a one family, which called for a complete renovation including foundation repair, but not expanding on the footprint in any way. He gutted the interior of the house and got into the foundation. The house was 20'x35' and half of the right rear and the whole back of the foundation was crumbled fieldstone. He jacked the house up, took out the right rear of the foundation, putting in new footings, and had someone block up the back of the foundation with concrete. At that point, the left rear, the waterside, and the left side were crumbling and the CEO modified his Building Permit to rebuild the foundation.

At about the same time, he received approval from the Board to expand the second floor. He then removed the roof and when he took the second floor off, the back of the house crumbled. Mr. Kilty said he knew the house was old, being listed as 1680, but he never expected the walls and foundation would be in such bad repair and it didn't dawn on him that he needed a Building Permit to rebuild the back wall. He had already replaced the foundation, framed up the back of the house, had permission to put on a new second floor and new hip roof and about 22 feet of the back wall fell. As he started to repair the left wall, it crumbled so, at that point, the whole corner of the house had fallen.

Mr. Kilty explained that he rebuilt the left wall and the back wall not thinking he went beyond the perimeters of the Building Permit. Now that he had two nice walls, he went to the Building Department to see if he could replace the other two walls. After speaking with Shelly Bishop, he left thinking he didn't have permission to do the other two walls so the next day, he rebuilt the right wall. At that point, the Building Inspector came down and shut him down until he got Permits. He then locked up the house, nailed it shut and vacated the property.

Referring to photographs he provided, Mr. Kilty illustrated for the Board the process that had occurred. He thought that since damage to the structure had nothing to do with a willful act on his part or through his neglect, it fell under 16.28.140, which stated that if any legal nonconforming building became damaged, it could be restored within 12 months of the damage provided such reconstruction did not enlarge the structure in size or made the property more nonconforming. He had owned the building for five or six months and believed these two walls should be able to be rebuilt under the Code.

Mr. Kilty concluded by explaining that when he originally came before the Board, it was to extend two 17' dormers to put on a full second floor with eight-foot ceilings and a hip roof on top of it. With the back wall crumbled, there were no dormers left and in the front, four 2'x2' sticks, which had been called dormers, were removed for safety. He knew he had issues with these two walls and asked if he had issues with the second floor from his initial approval? If, under 16.28.140, he could rebuild his walls, he asked if the CEO could give him permission to rebuild his front wall?

Chairman LaMarca asked if there was anyone present who would like to speak in favor of the application.

Ken Lamont came to the podium and said he abutted the property at 150 Whipple Road. In 1978, he and his wife bought the property at 154 Whipple Road and at that time, they had it appraised. When the appraisal came back, it was explained to them that there was only one negative to buying the property and that was the property it abutted at 150 Whipple Road. It was a negative then and 28 years later it was still a negative. Fortunately, Jeff Kilty came along with a vision of how to improve the property and fix it up. Mr. Kilty introduced himself and fully explained what he had in mind to do, even allowing him to look at the plans, all of which he didn't need to do. Mr. Lamont said he thought this project would not only be an enhancement to his property but to the neighborhood as a whole and reiterated he was speaking in favor of the application.

William Mow of 160 Whipple Road, which was the next house up towards Kittery Point, said he also had no problem with what Mr. Kilty wanted to do, especially in light of the fact the walls fell down (which all the neighbors knew) and since he was not making it any bigger. That house had always been the bane of the whole neighborhood and Mr. Kilty had been right up front with all the neighbors. He also agreed that having that house done was definitely going to help the neighborhood and, conversely, if it wasn't done, it would hurt the neighborhood.

Chairman LaMarca asked if there was anyone present who would like to speak opposed to, or about the application in any way. Hearing no response, the Chair requested the CEO's report.

CEO Ross reported that this was a nonconforming lot with nonconforming structures located within the Urban Residential and Shoreland Zones. Mr. Kilty received a Building Permit on July 18, 2006 to convert a duplex to a single family, including plumbing, electrical, partial basement to be demolished and rebuilt, windows, gut and rehab, exterior walls to remain in place. The basement was approved and the foundation did need repair. He came before the Board on September 12, 2006 to request permission to do a second floor dormer and even though it was obvious the second floor would not be able to remain in place and expand the way he had been given permission to do it, where the first floor would remain in place as indicated in the original approval, she told him it was okay to proceed. On October 18, she noticed some of those walls that had been specified in the Permit as having to remain in place had come down so she issued a Stop Work Order on the property because the work that was being done exceeded the perimeter of the July 18th Permit.

Chairman LaMarca explained to Mr. Kilty, as a general statement, that a willful act under 16.28.140 didn't mean that he meant to break the law; those walls came down because of something he physically did.

The Chair then noted to the Board that what they had in front of them was an Administrative Appeal and his personal opinion was that there was no question the work went beyond the Permits and so the CEO had the right to issue a Stop Work Order but Mr. Kilty was asking them permission to continue and the Chair was concerned about the issue of notification. Having said that, the Board had allowed applicants to change their application from a Variance to a Miscellaneous and wondered if it was a big leap, because of the notification issue, to go from an Administrative Appeal to something else.

Mr. Gardner thought they should approach this in two steps and agreed that the notices were important.

Mr. Costa brought up the phrase "willful act" and noted that Mr. Kilty had been in the process of doing what he had been granted permission to do. Mr. Costa commended Mr. Kilty for even thinking about doing something with that house and didn't think it would be right to not allow him to continue. The Chair stated they needed to decide first whether they could debate any approval. Mr. Costa said he leaned towards looking at it as maintenance and repair, although it was a large portion of the house.

Mr. Wilson asked what the next corrective step was for the applicant and the Chair said the next step would be to do a Miscellaneous Appeal to rebuild the house.

The Chair noted that the application was presented to them and had been posted as an Administrative Appeal but if they acted on Mr. Costa's statement that it made perfect sense that it fell apart, they could consider it as a rebuild, making a Stop Work Order unnecessary. They could then approve the Appeal and he could continue working. If, however, they felt he definitely went beyond what he needed to do and denied his Administrative Appeal, then Mr. Kilty would have to come in front of the Board and say he wanted to rebuild the whole house and would have to get the rest of his Permits. The Chair stated that the question he had was, if Mr. Kilty came in front of them and said he wanted to take down the entire building and start over, what would they say? What the Board had to decide right now was, was what happened to Mr. Kilty part of maintenance and repair because he was doing things he was supposed to be doing and this just fell. If so, we grant the Permit and he presses on.

In the past, the Chair said the Board had always acted under the assumption that once a house was gone, there was no house, it became a tear down and rebuild and, therefore, it would have to meet all codes, which, obviously, this house would not be able to meet. The Chair also noted that they had to be careful with this because what would prevent someone else who was rebuilding half of his house coming before them saying that while he was in that process, this other thing needed to be redone and that person ended up with a whole new house.

Mr. Gardner noted that each case was separate and Mr. Costa indicated he couldn't even consider how he would judge if Mr. Kilty came in for a tear down and rebuild because, in his eyes, that wasn't what he came in for. The Board granted him permission to do things and, through no fault of his own, the house wasn't in good enough shape for him to do it.

Responding to Mr. Gardner's question about the importance of a public notice, Mr. Costa replied that in this case he didn't feel the notice was material because Mr. Kilty wasn't asking to add anything.

Mr. Kingsbury asked the CEO if Mr. Kilty had done something differently on the first floor, would it have been legal and the CEO replied that all that would be legal was leaving the wall up.

Chairman LaMarca said, again, he thought they were going down a different path and wondered if they could do this.

Mr. Wilson referenced 16.16.050 F on Page 322 where it stated that the Board could render a decision to uphold, modify or reverse a decision of the CEO. He thought there was no question they needed to uphold the CEO's decision because of the language contained in the Permit and the CEO had no power to otherwise modify that. However, he said, he believed the Board could modify that Stop Work Order, saying they upheld the fact the work was stopped but now they would modify that Order due to the circumstances and permit further construction. Mr. Wilson said he didn't know what the Board wanted to do about that front wall but he thought they could allow Mr. Kilty to continue.

Ms. Brown confirmed with the CEO that nothing had changed with the walls because she would not be willing to go down this road at all if there was any additional change.

Chairman LaMarca noted to Mr. Kilty that it would be his opinion that what he did to the right side wall, he would have to do with the front wall. The Chair then stated what it appeared they would do was to uphold the issuance of the Stop Work Order and then modify it by saying they would allow construction on the two walls that came down, the back wall and the left wall, but everything else had to stay within the perimeters of the Permit.

Mr. Gardner noted there was still a question about the front wall and the Chair said they would not allow that. The CEO added that any covered entries would have to come back to the Board for approval. Mr. Wilson asked the CEO if she had any red flags with the way the Board was heading with this and the CEO replied, no, she had watched the project all the way through.

Chairman LaMarca stated that the way he perceived this was, they moved the application, denied the Appeal and then modified the CEO's Stop Work Order to allow him to replace the left and rear walls that fell.

CEO Ross stated that if the Board completely denied his Appeal, he would still be in violation but if they did a modification, they could add an Order of Correction.

Mr. Gardner said if they upheld the CEO's position and modified it, then the violation was essentially cancelled.

Chairman LaMarca agreed and thought that was the way to go, upholding the CEO's right to issue the Stop Work Order and allow corrective action to replace those two walls exactly as they were.

Ms. Brown, as secretary, read the application as follows: Move to modify the Notice of Violation of Jeffrey Kilty in order to take corrective action to replace the rear and left side walls exactly as they were and to preserve the front and right walls in regard to Mr. Kilty's application requesting an Administrative Appeal to the terms of Title 16, Section 12, Subsection 060, Title 16, Section 28, Subsection 130.A, and Title 16, Section 32, Subsection 490.N.2.a of the Kittery Land Use and Development Code Zoning Ordinance in order to receive a Building Permit to construct a new right side and back wall on exact footprint of old walls at property located at 150 Whipple Road, Map 10, Lot 1, Kittery, zoned Urban Residential. If approved, this modification negates any violation on said property. Construction shall be in accordance with a picture submitted, dated and signed by Jeffrey Kilty and Michael LaMarca, Chairman. A motion to approve the modification was made by Mr. Gardner, seconded by Mr. Kingsbury.

*A SHOW OF HANDS RESULTED IN A UNANIMOUS VOTE IN FAVOR OF THE
MODIFICATION MOTION PASSES 6/0*

Chairman LaMarca informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and that they would try to get Findings of Fact out within seven days of tonight's hearing

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for such Permit, it merely granted the CEO authority to issue the same.

FINDINGS OF FACT
Application #2 – Jeffrey Kilty

1. *This application involved a nonconforming lot with a nonconforming structure*
2. *The applicant was looking for an Administrative Appeal of a Stop Work Order issued by the CEO due to the fact that two walls not listed on his Permit were removed and work had begun to replace them.*
3. *The walls basically crumbled due to age when the surrounding structure was touched.*

CONCLUSIONS

1. *After lengthy consideration, the Board approved 6/0 a modification to the Notice of Violation, allowing the applicant to replace the rear and left walls, as they were in the same footprint, while maintaining the right and front wall.*

A motion to accept the Findings of Fact, as written, was made by Mr. Wilson, seconded by Mr. Costa, with all in favor.

3. Howard Patten, representing H&M Realty, LLC, requesting a Special Exception to the terms of Title 16, Section 12, Subsection 100.C (Page 263) of the Kittery Land Use and Development Code Zoning Ordinance in order to remove existing commercial building and construct a mixed-use commercial/residential building at property located at Bridge Street, Map 3, Lot 69, Kittery, zoned LB.

Tom Harmon from Civil Consultants, representing H&M Realty and the Pattens, came to the podium and explained to the Board that the Pattens were there for a Special Exception for residences in a mixed-use building and currently had Planning Board approval for the project, which was conditioned upon receiving the Board's approval, as well as some technical conditions. Referring to a new submitted photograph, Mr. Harmon indicated that the property ended at the railroad road tracks. He also indicated they had an agreement with the Maine DOT to access the back of the building and had a new entrance permit allowing entrance from the Bridge Street ramp. Mr. Harmon said they

would be constructing an entrance, closing off the existing one, making the property safer; they needed to be able to have turning movement for larger vehicles and had actually reduced the impervious area.

Mr. Harmon noted that the building was larger than the existing building but they would actually be having more green space on the side and detailed their proposal for dealing with storm water drainage. Mr. Harmon showed the Board a preliminary architect's rendering of the building and noted that he thought this was the first project that came through under the new peer review system and new lighting standards; there were extensive landscaping requirements, which had been met, and they had lines marked out for pedestrian traffic. The bottom floor of the building would be commercial offices, the next three floors would be residences and garages would be at ground level, along with outside parking. Per Rick Rossiter's suggestion, their parking ended up infringing a little on the Bridge Street Right-of-Way, for which they received the approval of the Planning Board.

Mr. Harmon concluded by saying they felt this project would be an enhancement to the area and to Kittery; they were very nice residences, were in an area that already had a mixed-use of residential and commercial and it was a project that the Town and the owners could be proud of.

Chairman LaMarca asked if there was anyone present who would like to speak in favor of, opposed to, or about the application in any way. Hearing no response, the Chair requested the CEO's report.

CEO Ross reported that this was a conforming lot with a currently nonconforming structure located within the Local Business and Shoreland zoning areas. Title 16.12.100.C stated that residential dwelling units as part of a mixed-use building required approval as a Special Exception. This project included demolition of the existing nonconforming structure and construction of a new conforming structure with a mix of eight dwelling units and commercial use of the first floor. The CEO noted that the project brought a building that was nonconforming into conforming regarding setbacks for both LB and Shoreland Zones. Local Business areas within the Shoreland Zone allowed for 70 % lot coverage; the property was currently 80% and this project would bring it to 67%.

Mr. Kingsbury asked how the commercial space was accessed and Mr. Harmon referred to the site plan and explained that the commercial area was reached from the back, the railroad and water side, and was below the entrance in the front.

Ms. Brown noted she visited the property and confirmed with the CEO that the new project would meet all setbacks and confirmed with Mr. Harmon that the residences were three-floor units and the commercial space was confined to the first floor in the back.

As a global statement for the Board, Mr. Wilson noted that regarding the mixed use of commercial and residential, he thought their duty was to protect the residential. His only real concern would be the dumpster operation and wondered if they should put a restriction on it or if that was a condominium association issue? Mr. Harmon pointed out the location of the dumpster, which was hidden from view and as far away from the residences as it could get.

As a Point of Order, Mr. Gardner explained to the Board that he had appraised this property but didn't think that represented any bias; Chairman LaMarca agreed and received Board consensus.

Chairman LaMarca turned the Board's attention to the Special Exception criteria and the Board unanimously voted that the project met the requirements of 16.24.060.A.1 through 4. The Board also unanimously voted that the project met the requirements of 16.24.060 B 1 through 16. The Board then reviewed the additional six Special Exception Conditions, having no problem with the first five conditions. The last condition 6, Hours of Operation, caused some discussion concerning the type of businesses that might occupy the commercial space.

Mr. Kingsbury wondered if a pizza parlor could be one of the businesses and the CEO replied that it would depend on parking requirements and perhaps they could place a restriction on the type of businesses allowed.

Mr. Wilson thought the Board should not take away a right unless they had a good reason and restricting them to offices, he thought, would be taking away their rights and he would rather restrict the hours. Mr. Gardner agreed and suggested the hours of 6:00 a.m. to 10:00 p.m., Monday through Sunday.

The Chair requested a vote indicating whether or not the Board would like to put a stipulation on the hours. The vote was as follows: 5/0/1, five in favor, zero opposed, one abstention, Mr. Costa abstaining.

Ms. Brown, as secretary, read the application as follows: Move the application of Howard Patten, representing H&M Realty, LLC, requesting a Special Exception to the terms of Title 16, Section 12, Subsection 100.C of the Kittery Land Use and Development Code Zoning Ordinance be approved in order to remove existing commercial building and construct a mixed-use commercial/residential building at property located at 19 Bridge Street, Map 3, Lot 69, Kittery, zoned LB, with the stipulation that hours of operation, Monday through Sunday, would be 6:00 a.m. to 10:00 p.m. Construction shall be in accordance with a sketch submitted, dated and signed by Tom Harmon and Michael LaMarca, Chairman. A motion to approve the application was made by Mr. Costa, seconded by Mr. Gardner.

A SHOW OF HANDS RESULTED IN A UNANIMOUS VOTE IN FAVOR. MOTION PASSES 6/0. APPLICATION APPROVED.

Chairman LaMarca informed the applicant that any interested party of standing had 45 days to appeal the decision of this Board at the York County Superior Court and that they would try to get Findings of Fact out within seven days of tonight's hearing.

The Chair further informed the applicant that this approval was not the granting of a Building Permit as he would still need to see the CEO for such Permit, it merely granted the CEO authority to issue the same.

FINDINGS OF FACT
Application #3 – Howard Patten

1. *This application involved a conforming lot with a nonconforming structure*

2. *The applicant was looking to tear down the existing building and rebuild and create a mixed-use structure with businesses and condos.*
3. *The new building will make it a conforming structure on a conforming lot*

CONCLUSIONS

1. *Based on 16 24.060 A, B, C, D, and E, the Board found that the application did meet the criteria for a Special Exception and voted 6/0 to approve the application*
2. *The Board added one stipulation, that hours of operation shall be 6 00 a m to 10:00 p m.*

A motion to approve the Findings of Fact, as written, was made by Mr. Costa, seconded by Mr. Wilson, with all in favor.

4. Chris Eckel requesting an Administrative Appeal of a Notice of Violation to the terms of Title 16, Section 28, Subsection 130 (Page 340), Title 16, Section 32, Subsection 490.K.2 (Page 380), and Title 16, Section 32, Subsection 490.N.2.a (Page 388) of the Kittery Land Use and Development Code Zoning Ordinance in order to maintain and finish current construction plan on property located at 3 Knight Avenue, Map 4, Lot 70, Kittery, zoned Kittery Foreside.

Tom McCue, the contractor for Mr. Eckel's project, came to the podium and told the Board he did not know why Mr. Eckel was not present.

Checking with the CEO, Chairman LaMarca explained to Mr. McCue that since he had no written permission from Mr. Eckel to represent him, he could not act as his agent and the Board would have to postpone the hearing until the second Tuesday in January.

ACCEPTANCE OF MINUTES:

The Minutes of September 12, September 26 and October 24, 2006 were accepted, as amended.

ADJOURNMENT:

A motion to adjourn was made by Mr Costa, seconded by Mr Kingsbury, with all in favor.

MEETING ADJOURNED 9:39 P.M.

